

## INTRODUCTION

This matter came before the Commissioner of Financial Regulation (the “Commissioner”) for argument on exceptions filed by Equitable Mortgage Group, Inc. (“Respondent”) to the Commissioner’s Proposed Order of June 29, 2009 (“Proposed Order”). On June 4, 2009, Administrative Law Judge Neile S. Friedman (the “ALJ”) issued a Proposed Decision in which the ALJ proposed that Respondent’s mortgage lender license be revoked and that Respondent refund to the following three borrowers the finder’s fees listed: \$2,995.00 to [REDACTED], \$4,771.33 to [REDACTED], and \$4,895.00 to [REDACTED] (collectively, the “Borrowers”).

The Commissioner, in her Proposed Order, adopted the ALJ's Proposed Decision with amendments. In particular, the Commissioner amended the ALJ's Conclusions of Law by concluding as a matter of law that, pursuant to Md. Code Ann., Com. Law § 12-807, Respondent must refund to the Borrowers three times the amount of the finder's fees collected (rather refunding only the amount collected). The Commissioner also amended the ALJ's Recommended Order by ordering Respondent to pay to the Borrowers three times the amount of finder's fees collected, as follows: \$8,985.00 to [REDACTED], \$14,313.99 to [REDACTED] and \$14,685.00 to [REDACTED]. The

Commissioner did adopt without amendment, however, the ALJ's Conclusion of Law and Recommended Order revoking Respondent's mortgage lender license.

A hearing on Respondent's exceptions was held before the Commissioner on September 3, 2009. Respondent was represented by its president, Mr. Darren Soodak and was not represented by counsel. Kris King, Assistant Attorney General, presented arguments on behalf of the Office of the Commissioner. The proceedings were recorded.

The record before the Commissioner at the exceptions hearing consisted of:

1. The ALJ's Proposed Decision.
2. The Commissioner's Proposed Order.
3. The Exceptions filed by Respondent.
4. The Exceptions Hearing Notice with certified mail receipt.
5. All exhibits admitted into the record.

### **FINDINGS OF FACT**

The Commissioner adopts the ALJ's Findings of Fact.

### **CONCLUSIONS OF LAW**

The Commissioner affirms the ALJ's Conclusions of Law as amended by the Commissioner's Proposed Order.

### **DISCUSSION**

#### **I. Legal Basis for License Revocation and Treble Finder's Fee Refunds**

##### **A. License Revocation**

This case arose from Respondent's failure to satisfy the requirements of a Settlement Agreement Consent Order entered into by Respondent and the Commissioner on or about July 31, 2008 (the "Consent Order"). Under the terms of the Consent Order, Respondent was required to refund to the Borrowers the following finder's fees, totaling \$6111.33: \$495.00 to [REDACTED]; \$721.33 to [REDACTED]; and \$4,895.00

to [REDACTED]. Respondent was required to make the refund payments within 90 days and submit proof of the payments to the Commissioner. Respondent was also required to pay a civil penalty to the Commissioner in the amount of \$2,000.00. (Prop. Dec. at 3-4.) Respondent paid the civil penalty, but did not make the required refunds. (Prop. Dec. at 5.)

The Consent Agreement itself resulted from the Final Order dated April 21, 2008 issued by the Commissioner in a contested case in which Respondent was required to make refund payments in amounts significantly greater than the amounts required under the Consent Order. (Prop. Dec. at 3.) Under the April 21, 2008 Final Order, Respondent was required to refund finder's fees totaling \$12,661.33 to the Borrowers. (Prop. Dec. at 3.)

The ALJ found, and we agree, that Respondent's violation of the Consent Order was a violation of Md. Code Ann., Fin. Inst. ("FI") § 11-517(a)(5)<sup>1</sup>. The ALJ stated that the:

"CFR<sup>2</sup> "clearly proved, through its documents and testimony, that [Respondent] violated the Consent Order as well as the Final Order of the CFR by failing to provide refunds to the borrowers and by failing to furnish proof of the refund payments. Because [Respondent] failed to appear for the hearing there was no challenge to these facts.

(Prop. Dec. at 5.) We find, as does the ALJ, that Respondent's failure to make refund payments as required "demonstrates that [Respondent] cannot be trusted to operate as a mortgage lender because refusing to make the borrowers whole demonstrates dishonesty,

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<sup>1</sup> FI § 11-517(a)(5) provides that "Subject to the hearing provisions in § 11-518 of this subtitle, the Commissioner may suspend or revoke the license of any licensee if the licensee or any owner, director, officer, member, partner, employee, or agent of the licensee: . . . (5) Otherwise demonstrates unworthiness, bad faith, dishonesty, or any other quality that indicates that the business of the licensee has not been or will not be conducted honestly, fairly, equitably, and efficiently."

<sup>2</sup> "CFR" refers to the Office of the Commissioner of Financial Regulation.

bad faith and unworthiness.” (Prop. Dec. at 5.) Respondent’s violation of FI § 11-517(a)(5) provides a sound legal basis on which to revoke Respondent’s mortgage lender license.

**B. Treble Finder’s Fee Refunds**

Respondent’s violation of the Commercial Law Article (“CL”) by collecting impermissible finder’s fees provides a proper legal basis on which to require Respondent to refund treble finder’s fees to the Borrowers. The ALJ found that:

with regard to the [REDACTED] and [REDACTED] transactions, [Respondent] violated [CL] 12-807(d)(1) and (2) by imposing a finders fee that exceeded that which was specified in the parties’ broker agreement. In the [REDACTED] transaction, [Respondent] violated section 12-807(d)(3) of the Commercial Law Article by failing to date the broker agreement.

(Prop. Dec. at 6.) Pursuant to CL § 12-807, “Any mortgage broker who violates any provision of this subtitle shall forfeit to the borrower the greater of: (1) Three times the amount of the finder’s fee collected; or (2) the sum of \$500.” Consequently, the ALJ was correct when stating:

Under [CL § 12-807] the CFR would be entitled to have me order a refund to the borrowers in the amount of three times the amount of the finder’s fees collected from the borrowers because [Respondent] violated various provisions of the finder’s fee law in connection with the transaction.

(Prop. Dec. at 6.) We too find that requiring Respondent to pay to the Borrowers three times the amount of the finder’s fees it collected from them is consistent with the applicable law.

**II. Respondent Does Not Allege Error of Law or Proffer Legal Arguments to Support its Exceptions**

Respondent does not argue that the ALJ or the Commissioner committed an error of law or that there exists no legal basis on which to revoke its license and require that it

refund to the Borrowers three times the amount of the finder's fees collected. Indeed, Mr. Soodak, the principal of Respondent, stated that "I take full responsibility for my actions (and inactions) and the consequences that accompany them." (Respondent's July 20, 2009 letter setting forth its exceptions, hereafter referred to as "Respondent's Exceptions Letter").

Respondent appears to raise two arguments. The first is that Respondent's violations of law should be excused because of Mr. Soodak's personal and business difficulties. (Respondent's Exceptions Letter.) The second is that Respondent's current predicament (in part arising from Respondent's failure to appear at the hearing below) is the result of the failure of Assistant Attorney General Kris King to return a telephone call to Mr. Soodak. (Respondent's Exceptions Letter; testimony of Mr. Soodak at Exceptions Hearing.)

We find both arguments to be without merit. Respondent cannot now attempt to blame the difficulties of life or the actions of others for its own failure to meet its refund obligations and to appear at the hearing before the ALJ. We surmise that the true cause of Respondent's situation was best articulated by Mr. Soodak himself when he stated that "I did nothing and hid my head in the sand." (Respondent's Exceptions Letter.) Respondent's arguments are particularly hollow given the fact that Respondent was given the opportunity to make reduced refunds through the Consent Order, which Respondent voluntarily entered into. Instead of taking advantage of this opportunity, however, Respondent chose to disregard its legal obligations and flout the law. Accordingly, we do not find a basis on which to vacate or amend the Proposed Order.

**ORDER**

The Commissioner having considered Respondent's exceptions and arguments in support thereof, and finding no errors of law or legal or factual basis to support Respondent's exceptions to the Proposed Order, it is:

**ORDERED** that Respondent's mortgage lender license be, and hereby is, **REVOKED**, and it is further

**ORDERED** that Respondent refund to the Borrowers three times the amount of the finder's fees collected by Respondent from the Borrowers, as follows: \$8,985.00 to [REDACTED], \$14,313.99 to [REDACTED], and \$14,685.00 to [REDACTED]. Respondent shall make these refund payments within sixty days of the date of this Final Order and Opinion. Respondent shall send to the Commissioner the front and back of each cancelled refund check negotiated by the borrowers at the following address:

The Office of the Commissioner of Financial Regulation  
Attn: Suzanne Elbon  
500 North Calvert Street, Suite 402  
Baltimore, Maryland 21202

Respondent shall send the required proof of payment to the Commissioner within ten days of making such payment; and it is further

**ORDERED** that the records and publications of the Commissioner reflect this decision.

12-7-09  
Date

Sarah Bloom Raskin  
Sarah Bloom Raskin  
Commissioner of Financial Regulation